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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR 12-00894 EMC
)	
Plaintiff,)	STIPULATION AND PROPOSED ORDER TO
)	CORRECT VICTIM IN SECOND AMENDED
v.)	JUDGMENT PURSUANT TO FRCP 36 AND 18
)	USC §3664(j)(1)
JOHNATHON WHITMAN,)	
)	
Defendant.)	
)	
)	

Plaintiff United States of America ("Plaintiff") and Defendant Johnathon Whitman ("Defendant") enter into this stipulation based on the following facts:

RECITALS

1. On December 18, 2013, Defendant pled guilty to one count of wire fraud in violation of 18 U.S.C. §1343. As part of the Defendant's sentence, this Court imposed certain criminal monetary penalties including restitution in the amount of \$48,846 due to Freeman, Sullivan & Co. ("Freeman"). Doc. 21 (the "Judgment").

2. On or around December 18, 2014, a former employee for Freeman, a named victim in the above captioned matter, submitted a request to the Clerk of Court asserting that Freeman had been

1 acquired by Nexant, Inc. ("Nexant") and that all restitution payments should be directed to Nexant.

2 3. On March 24, 2015, Nexant submitted a letter to the U.S. Attorney's Office confirming
3 that it had acquired Freeman and assumed all losses on behalf of Freeman, including restitution
4 payments owed to Freeman under the Judgment issued against Defendant in the above captioned matter.

5 4. The information provided to the United States confirmed that Nexant is the proper
6 recipient for all restitution payments in this matter following its acquisition of Freeman.

7 5. On April 8, 2015, the United States filed a Motion to Correct Judgment and requested
8 that the Court replace Freeman with Nexant as the proper named victim in this matter pursuant to
9 Federal Rule of Criminal Procedure 36 and 18 U.S.C. § 3664(j)(1). *See* Docket No. 23.

10 6. On April 16, 2015, the Court granted the Motion and, on April 24, 2015, issued a first
11 Amended Judgment that identified Nexant as the named victim entitled to receive all restitution
12 payments in this matter. *See* Docket Nos. 24-25.

13 7. On April 27, 2015, the Court issued a Second Amended Judgment at the request of the
14 Finance Unit of the Clerk's Office. The Second Amended Judgment amended the Judgment to award
15 \$14,000 in restitution to Freeman and the remainder to Nexant. *See* Docket No. 26.

16 8. On February 28, 2017, the Finance Unit contacted the U.S. Attorney's Office and stated
17 that a check for \$14,000 issued to Freeman had been returned as undeliverable and inquired whether the
18 funds should be distributed to Nexant.

19 9. The USAO informed the Finance Unit that all funds should be paid to Nexant as set forth
20 in its filed Motion and the Court's Order issued on April 16, 2015. The Finance Unit advised the USAO
21 that it required another Court Order under the criminal case number correcting the named victim before
22 it could release the remaining funds to Nexant.

23 10. On March 30, 2017, the USAO contacted Defendant's Counsel regarding a stipulation
24 requesting that the Court correct the Second Amended Judgment and issue a Third Amended Judgment
25 identifying Nexant as the only named victim entitled to receive all restitution payments.

26 11. On April 12, 2017, Defendant's Counsel agreed that the Judgment could be corrected to
27 include only Nexant as the named victim.

12. On April 13, 2017, the USAO contacted Probation and the Probation Office does not oppose the request to amend the Judgment.

Based on the foregoing the parties stipulate and agree:

STIPULATION

1. The parties agree the Court may order that the named victim on the Second Amended Judgment in a Criminal Case, Freeman, Sullivan & Co., be corrected and that the Court issue a Third Amended Judgment identifying Nexant, Inc. as the properly named victim in the above case pursuant to FRCP 36 and 18 U.S.C. § 3664(j)(1).

2. The parties further agree that the \$14,000 restitution paid by Mr. Whitman and currently held by the Clerk's Office should be ordered released and made payable to Nexant, Inc. Payments to Nexant should be sent to Nexant, Inc. c/o David Defelice, 101 Second Street, Suite 1000 San Francisco, CA 94105.

SO STIPULATED

Dated: April 14, 2017

Respectfully Submitted,

s/ Gabriela Bischof

GABRIELA BISCHOF
Attorney for Defendant Johnathon Whitman

BRIAN J. STRETCH
United States Attorney

By:

s/Raven M. Norris

RAVEN M. NORRIS¹
Assistant United States Attorney

¹ In accordance with Local Rule 5-1(i)(3), I certify that the content of the Stipulation is acceptable to counsel for Defendant and that I have obtained authorization from Gabriela Bischof to affix her electronic signature to this document.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	CASE NO. CR 12-00894 EMC
)	
Plaintiff,)	[PROPOSED]
)	ORDER GRANTING REQUEST TO CORRECT
v.)	VICTIM NAME IN SECOND AMENDED
)	JUDGMENT
JOHNATHON WHITMAN,)	
)	
Defendant.)	

Upon consideration of the Stipulation to Correct Judgment, and for good cause shown,
IT IS HEREBY ORDERED that the request that the judgment be corrected to reflect Nexant,
Inc. as the named victim is GRANTED and that the Court shall issue a Third Amended Judgment.

IT IS FURTHER ORDERED that the Clerk's Office's Finance Unit shall release the \$14,000
paid by Mr. Whitman and previously paid to Freeman, Sullivan & Co. and make the funds payable to
Nexant, Inc. Payments should be sent to Nexant, Inc. c/o David Defelice, 101 Second Street, Suite 1000
San Francisco, CA 94105.

Dated: 4/14/17

EDWARD M. CHEN
JUDGE
UNITED STATES DISTRICT JUDGE

